IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.47090 of 2007
Surendra Singh S/o Shivram Singh R/o Village-Sanjeti,
P.S.- Jaitpur, Agra (U.P.), P/R of Gandhi Chowk, Matiari,
P.S. Forebesganj, District-Araria.
…… Petitioner.
Versus
1.The State of Bihar
2. Sanjay Rai S/o Lakhan Rai R/o Tikulia Jogbani, P.S. Jogbani,
District-Araria.
……Opposite parties.

For the petitioner : M/s Raj Kumar and Sanjay Kumar, Advocates.
For the State : Mr. R.P.S. Singh, A.P.P.
For the opp.party no.2 :Mr. Praveen Kr. Agrawal, Advocate.

07/ 19.11.2008 Heard learned counsel for the petitioner (informant), learned counsel for the State and learned counsel for opposite party no.2 (accused).

This petition has been filed for cancellation of bail granted by this court to opposite party no.2 Sanjay Rai vide order dated 28.08.2007 passed in Criminal Miscellaneous No.32031 of 2007.

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It transpires from the said order of this court that two of the grounds, on the basis of which the said order was passed, were that the sole eye witness (Ramesh Goshwami) had not named him in his statement under section 164 of the Code of Criminal Procedure and that he had got no criminal antecedent, with regard to which specific statements were made on behalf of the petitioner in paragraphs 7, 8 and 9 of the bail petition bearing Criminal Miscellaneous No.32031 of 2007.

Learned counsel for the petitioner(informant) has stated that opposite party no.2 (accused) has got very grave criminal antecedent as he is already involved in thirteen criminal cases regarding

murder, kidnapping, robbery, etc. and in most of them charge sheet has already been submitted. The said cases are enumerated in paragraph 10 of the petition. The petitioner has also produced as Annexure-2 the statement of the sole eye witness Ramesh Goshwami under section 164 of the Code of Criminal Procedure in which the name of accused opposite party no.2 Sanjay Rai had been specifically mentioned. Hence, learned counsel for the petitioner submits that the accused opposite party no.2 had intentionally concealed the facts and had made wrong statements before this court in order to get an order of bail.

On the other hand, learned counsel for opposite party no.2 after filing counter affidavit submits that although in paragraph 8 of the bail petition (Criminal Miscellaneous No.32031 of 2007) it has been stated that he has not been mentioned by Ramesh Goshwami with respect to the incident dated 07.02.2007 but the said statement has been clarified by the said accused in supplementary affidavit filed on 28.08.2007 in which it was stated that the said witness Ramesh Goshwami in his statement under section 164 of the Code of Criminal Procedure had not named the petitioner as the assailant of the deceased. Learned counsel for opposite party no.2 further submits that the affidavit in the said bail petition (Criminal Miscellaneous No. 32031 of 2007) had been sworn by the wife of opposite party no.2, who is a purda nashin village lady and had no knowledge or information of the implication of opposite party no.2 in any other case and hence the said statement was made by her

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unknowingly.

Considering the entire matter in detail, specially in view of the fact that the affidavit in Criminal Miscellaneous No.32031 of 2007 was sworn by the wife of the accused (opposite party no.2), who is a purda nashin village lady having no specific knowledge, no action need be taken against her in the said matter. However, in any view of the matter the said order, in Criminal Miscellaneous No. 32031 of 2007, was clearly passed on the basis of wrong statements made in the bail petition and hence it cannot be sustained. Thus, order dated 28.08.2007 passed in Criminal Miscellaneous No.32031 of 2007 is recalled and bail granted to opposite party no.2 Sanjay Rai in connection with Narpatganj P.S. Case No. 50 of 2007 before the learned Chief Judicial Magistrate, Araria, is hereby cancelled. Accordingly, this petition is allowed and the learned court below is directed to take steps to arrest opposite party no.2 if he does not surrender.

If the cost of fax is deposited by the petitioner by tomorrow, let this order be sent to learned court below through fax.

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harish/ **(S.N.Hussain, J.)**